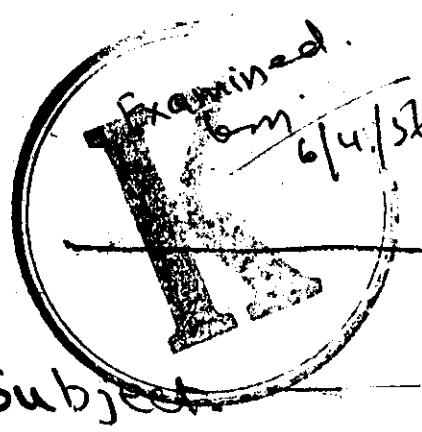
1944.

File. No. S. Dur. 8/44.

Legal- Department.

A - Branch.



Subject.

C. S. No. 157 of 1943.

Ramchandra Hanmant Desai - - - Plff.

V/s

The Province of Bombay - - - Deff.

Claim - Rs. 222-5-0

R-34 (E)

File No. - S. Dur. 8/44.

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This relates to Dharwar C.S. 157 of 1943. Plaintiff was holder of a Pargana watan (class V) under a 'Gordon Settlement Sanad. For default in payment of the judi, Govt. by G.R. R.D. 6792/33, dated 24.5.37 ordered resumption of the lands by levy of full assessment. Slip 3.

2. Other defaulters also were similarly affected by the said Govt. Resolution. Subsequently on a representation of the Watandars' Association Govt. offered restoration on certain terms and conditions: Vide G.R. R.D. 6792/33, dated 14.4.38. Slip 4

3. Plaintiff complied with the conditions, and a new *Sanad was issued to him, which he accepted but only subject to his right to bring a suit challenging the validity of the order of 24.5.37. This is the suit. It was filed on 20.4.43. * Slip 5

4. Due payment of the judi was a condition of the Gordon Settlement Sanad. Govt. was entitled to forfeit the Sanad on breach of the condition. In other cases, forfeiture has been held legal by the High Court for breach of another condition of the Sanad - condition to remain faithful subject of British Govt. * Para 5 of Grounds of Defence.

5. The suit is defensible on the technical grounds of estoppel and limitation also.

6. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A draft written statement is also put up.

21/6

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Long Cause Suit No.157 of 1943.

In the Court of the I Class Subordinate Judge, Dharwar.

Ramchandra Hanamant Desai. .... Plaintiff.

vs.

The Province of Bombay. .... Defendant.

Claim Rs.222/5/0 for purposes of Court fees and jurisdiction.

Written Statememt.

Written Statement of the defendant abovenamed is as follows:-

1. Plaintiff's claim is not true and is not admitted.

2. The suit is barred under section 4 of the Revenue Jurisdiction Act.

3. Plaintiff was liable to pay annually to Government a sum of Rs.1339-0-11, as judi in respect of his watan.

4. For the year 1934-35 plaintiff was liable to pay the said amount of Rs.1339-0-11, judi for the current year and also suspended arrears of Rs. 25-11-10. The former amount was paid in time, but the latter amount, namely Rs.25-11-10, was not paid till 22nd August 1936.

5. The judi for 1935-36 was Rs. 1339-0-11 as stated above. Plaintiff paid Rs.410-5-1, only during the year, leaving - Rs.928-11-10 as arrears at the end of the year. Subsequently he paid into the Taluka Treasury Rs.500/- on 10th October '36, Rs.200/- on 15th April 1937 and Rs. 228-11-10, on the 26th April 1937.

6. The Garden Settlement Sanad granted to plaintiff was subject to a condition that he should render to Government the fixed yearly dues. Plaintiff committed breach of the Condition and thus became liable to have his Sanad forfeited and the land resumed. The Orders of 24-5-37 were therefore legal and valid. Plaintiff's various contention to the contrary in paras. 3 to 9 of the plaint are not correct and are denied.

7. .....

7. Plaintiff was a defaulter on account of his breach of the said condition. There was no obligation on the Collector or Government to grant time to the plaintiff for payment of judi as per his alleged application of 14-7-36. The payments made after July 1936 did not cure the breach which had taken place and did not also absolve him of his liability to the forfeiture of sanad and resumption of lands. The alleged circular of the Collector dated the 10th June 1927 does not apply to this case and plaintiff is not entitled to refer to it or to rely on it.

8. It is denied that plaintiff was entitled to specify notice as alleged in para. 9 of the plaint. It is moreover contended that plaintiff was aware of the action recommended against him by the Collector.

9. It appears that plaintiff made the payments of 15-4-37, and 26-4-37, in view of the Collector's report of 16th March 1937. The payments having been made after the report plaintiff is not entitled to rely upon them for challenging the validity of the Orders of 24th May 1937. Plaintiff's contention that the payments were accepted by the Revenue Officers without protest is not correct. The payments were not brought specifically to the notice of Government. Moreover in case of resumption by levy of full assessment plaintiff's liability far exceeded the payments made by him. It therefore cannot be contended that the payments were accepted for the purpose of condoning the plaintiff's breach of condition.

10. Defendant denies the contention that resumption of lands in one Taluka only was not in accordance with law.

11. The Government offer made in the Government Resolution of 14th April 1938 was an act of grace and was subject to conditions. Plaintiff fulfilled the conditions and accepted the new sanad according to the offer. He thus admitted that the old Sanad had been validly

validly terminated. Plaintiff's conduct in executing the new Sanad estops him from filing the present suit. His alleged reservation at the time of the new Sanad of a right to bring a suit of the present nature is of no effect and does not save the estoppel. As the new Sanad is in force, this suit is not mentainable.

12. The suit is barred by limitation. The orders of 24th May 1937, were valid. Moreover proceedings were actually taken afterwards for resumption by levy of full assessment. Plaintiff also paid the full assessment before 15th June 1938 in order to secure a restoration of the grant. Therefore whether or not the law in question creates a fresh cause. orders of 24th May 1937 were valid, there was an actual attack on plaintiff's rights, and it was not open to plaintiff to postpone his suit.

13. Plaintiff is not entitled to the refund of Rs.17-5-0, or any other amount.

14. Plaintiff is not entitled to any relief and the suit should be dismissed with costs.

District Government Pleader,
Dharwar.

I District Government Pleader, Dharwar, do hereby declare that what is stated in paras. 1 to 14 above is true according to the information received and believed to be true.

This verification is made at on the day of 1944.

District Government Pleader, Dharwar.

Suits :

Dharwar.

For a declaration that the plaintiff and his heirs are entitled to hold the suit Paragana Watan lands according to conditions in Gorden Settlement Sanad.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4671.

Bombay Castle, 3rd July 1944.

Letter from the Collector of Dharwar No. L.A.W. 414, dated the 29th February 1944—

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Civil Suit No. 157 of 1943

Ramchandra Hanmant Desai .. .. Plaintiff;

versus

The Province of Bombay .. .. .. Defendant.

Claim—Rs. 222-5-0.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 301, dated the 12th March 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 4670, dated the 3rd July 1944—Forwarding a copy of the brief with its accompaniments in advance.

[*P.T.O.*

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 4671, L. D., dated the 3rd July 1944.

To

Issued
USC
- 119

*The Revenue Department.
*The Commissioner, Southern Division.
*The Collector of Dharwar.
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to.

Submitted after issue
file in a new suit-file — New file
S Devi
5/9/44

29 A.P.A.R. 2/9

9 37

DHARWAR CIVIL SUIT No. 157 OF 1943.

Chronological Statement of Facts.

Plaintiff sues for a declaration that he and his heirs are entitled to hold the suit Paragana Watan lands according to the conditions in the Gorden Settlement Sanad, for a consequential injunction and for a refund of Rs. 17–5–0 recovered by Government in 1941–42 in excess under the terms of the new sanad issued to the plaintiff in July 1941.

2. The plaintiff is an eight anna sharer in the Deshgat Paragana Watan (class V) of Sheshgiri (Hangal Taluka, District Dharwar). Under the terms of the Gorden Settlement Sanad he was liable to pay annually to Government a sum of Rs. 1,339–0–11 as judi in respect of his watan.

3. For 1934–35 plaintiff was liable to pay the said amount of Rs. 1,339–0–11 and also suspended arrears of Rs. 25–11–10 which had been ordered to be recovered. The latter amount was however not paid during the year, but later on 22nd August 1936.

4. In respect of the judi for 1935–36 an amount of Rs. 410–5–1 only was paid, leaving as arrears at the end of the year Rs. 928–11–10. Plaintiff's father died sometime early in 1936. Plaintiff states that on 14th July 1936 he had made an application to the Collector for grant of time to pay the balance of judi.

5. On account of the said arrears of 1935–36 plaintiff paid into the Taluka Treasury Rs. 500 on 10th October 1936, Rs. 200 on 15th April 1937 and Rs. 228–11–10 on 26th April 1937.

6. Meanwhile on 12th February 1937 the Mamlatdar had submitted to the Collector a list of defaulters of whom plaintiff was one. On 16th March 1937 the Collector recommended to Government that the Paragana Watan lands of the defaulters including the plaintiff may be resumed by levy of full assessment. On 24th May 1937 Government accepted the proposal and ordered the resumption as per Government Resolution, Revenue Department, No. 6792/33, dated the 24th May 1937.

7. On 9th July 1937 plaintiff appears to have applied to the Collector praying for recommending to Government for cancellation of the orders of resumption. On 5th August 1937 the Collector replied that the request could not be granted. After this the proceedings for resumption of plaintiff's watan lands were taken up.

8. As a result of representation by the Watandars' Association Government ordered by their Government Resolution, Revenue Department, No. 6792/33, dated 14th April 1938 offering to issue fresh sanads, subject to alterations in the form of grants as might appear desirable, provided the defaulters had paid by a certain date all arrears and the current year's dues at full assessment rates.

9. Plaintiff having paid all dues in accordance with the above Resolution before 15th June 1938 which was the fixed date, the watan lands which had been resumed were restored to him on issue of a fresh sanad which plaintiff says he accepted under protest.

10. Under the new Sanad plaintiff was required to pay for 1941–42 Rs. 17–5–0 in excess of the amount as judi fixed under the Gorden Settlement Sanad.

11. On 13th July 1942 plaintiff gave notice of suit under section 80 of the Civil Procedure Code and filed this suit on 20th April 1943.

Grounds of Defence.

Jurisdiction.—The suit is barred under section 4 (*a*), clause 1 since it is a claim against the Crown relating to any property appertaining to any hereditary office. The office in this case although freed from the performance of services remains intact, as shown by the definition of hereditary office in the Watan Act, and the property is attached to that office: *See* Appaji *v.* Keshav 15 Bom. at page 23. The suit would be barred under clause 3 also in that it is a suit to set aside an order under the law relating to Watans. Since the plaintiffs' watan was covered by a Gorden Settlement Sanad, a proper revocation of the Sanad should be an order covered by this clause. Lastly the suit is barred under clause 4 as it is a claim against the Crown relating to lands declared to be held for service. These lands are service lands notwithstanding the fact that the services had been commuted.

2. *Limitation.*—The suit is barred under article 14 of the Limitation Act. The plaintiff's contention is that the order of 24th May 1937 was *ultra vires* and a nullity which need not be set aside and that therefore this suit filed in 20th April 1943 is in time. The validity of the order of 24th May 1937 will be considered presently; but even assuming that the order was *ultra vires*, it is clear upon the authorities that plaintiff could have waited only till he was actually attacked in pursuance of the order and that time began to run from the date of the attack. Plaintiff might have ignored the order as a nullity, but not the attack (*see* Abdullamiya *v.* Government of Bombay 44 Bom. L. R. 577 and Surannamma *v.* Secretary of State 24 Bom. 435). In the present case proceedings were actually taken for redemption and full assessment was levied. (The District Government Pleader should obtain details of the proceedings and the necessary documents from the Collector). Thereafter on 14th April 1938 Government offered restoration of the watan on certain terms and conditions, and thereupon plaintiff paid, before 15th June 1938, the full assessment levied by the resumption order of 24th May 1937. If plaintiff wished to challenge the legality of the order under which the payment was made he should have done so within a year of the date of payment. Lastly plaintiff went even further than the payment. He executed a new sanad. That sanad was inconsistent with the Gorden Settlement Sanad and therefore certainly an attack on his rights. It appears that the suit is not within a year even from the date of the new sanad. The District Government Pleader might verify this. Even if probably plaintiff had reserved his right to bring a suit of the present kind, he should have filed the suit within the year's time.

3. *Estoppel.*—The Government Resolution of 14th April 1938 expressly stated that the restoration of the Watan lands was offered by Government as an act of grace if the defaulters would fulfil certain conditions stated therein. Plaintiff fulfilled the conditions and accepted a fresh sanad which again mentioned the act of grace. The plaintiff now contends that he accepted the fresh sanad under protest. The District Government Pleader should ascertain from the Collector the fact as well as the form of the alleged protest. In any case it should be contended that the protest amounts to nothing and that the new sanad acts as an estoppel against the present suit. This is because Government then affirmed that the old sanad was validly terminated. If the plaintiff did not agree, his plain duty was to seek a proper remedy for the illegal termination. He could not have executed a fresh sanad: that clearly meant an admission that the old sanad was no longer in force. He could not both execute the fresh sanad and at the same time deny the admission. It was a plain question of election—the more so since the Government offer was only an act of grace. It is impossible

to consider that while entering a new contract Government intended to leave open the question of the validity of its previous orders. The terms of the Government offer are therefore important. Parties to a contract do not enter it under protest. Plaintiff cannot now approbate and reprobate. The new sanad is inconsistent with the old one. Plaintiff cannot contend that the old one still subsists when he has clearly accepted this new one and has not renounced it. His conduct hence estops him from challenging the order of 24th May 1937. (*See* section 115 of Evidence Act and Sarkar's commentary under the headings Estoppel by Conduct—by election and—by inconsistent position).

4. *Merits.*—Plaintiff's contentions are as follows : (*a*) that he was not a contumacious defaulter ; (*b*) that he had actually paid up the dues before 24th May 1937 and they had been accepted by Government without protest ; (*c*) that failure to pay the judi in time was not a sufficient ground for resumption in the case of a Gorden Settlement Sanad watan ; (*d*) that no notice was issued to show cause why resumption should not take place ; (*e*) that resumption of the lands in one taluka only was not in accordance with law.

5. All these contentions are based on a misapprehension of the orders passed by Government. A Gorden Settlement Sanad contains two conditions, first that the holder should continue faithful subject of the British Government; and, second, that he should render to the same the fixed yearly dues. In Shripad *v.* Secretary of State 28 Bom. L. R. 1175 and Narsingrao *v.* Secretary of State 34 Bom. L. R. 453 the sanad was forfeited and the lands resumed for breach of the first of the said two conditions. The decisions would apply equally to a breach of the second condition. When a grant is made subject to a condition, and the condition is broken, nothing should be clearer than that the grant may be revoked or resumed by the person making it. Further, section 39 of the Contract Act applies, and Government was entitled to put an end to the contract and resume the grant on the breach of the condition. The resumption by levy of full assessment was in accordance with the decision in Ramsomappa *v.* Secretary of State 39 Bom. L. R. 851.

6. The revenue year closes on 31st July, and in plaint paragraph 3 the plaintiff admits that " the judi for 1935–36 was to be paid before July 1936." That an amount of Rs. 410–5–1 only out of the total dues of Rs. 1,339–0–11 was so paid is also not in dispute. On these facts plaintiff's default and breach of condition are obvious. As plaintiff appears to be a big landed proprietor, the death of his father in the early part of 1936 would not be a sufficient excuse for non-payment of the judi in time, especially when the judi was after all only a fraction of the full assessment. Plaintiff states that on 14th July 1936 he had applied to the Collector for grant of time " till next year ", but that he received no reply. It should be contended in reply that such applications in law would never relieve a party from carrying out obligations under a contract. The test is whether there was any obligation on the Collector to accede to plaintiff's request for time, and if there was no such obligation, neither the application nor the absence of reply is material, and plaintiff must remain a defaulter. Further plaintiff's liability must be determined solely with reference to the sanad agreement, and hence plaintiff's reference to the Collector's circular of 10th June 1927 is not in point : *see* also Government Resolution, Revenue Department, No. 8528, dated 8th October 1923, quoted in Phadnis's Watan Act, p. 227. The question of contumacy and default has to be decided in the light of the sanad and not any circular which does not apply to this case.

7. Plaintiff's next contention is that he had actually paid up the arrears before the date of the Government Resolution of 24th May 1937. Here also the facts show that the Mamlatdar and the Collector had made their respective reports on 12th February 1937 and 16th March 1937. Plaintiff paid Rs. 200 on 15th April 1937 and Rs. 228–11–10 on 26th April 1937 in full satisfaction of the arrears. In regard to this conduct it should be observed, first, that an offer to perform or even performance after the due date cannot cure the breach of contract which has already taken place. Second, it is not unlikely that plaintiff had come to know of the Collector's report of 16th March 1937 and that he therefore made haste to make the payments. But that would only serve to disprove the alleged previous inability to pay. Third, the payments which were made in the Taluka treasury were not brought to the notice of Government, which was the authority which took action on plaintiff's conduct. It cannot therefore be said that the payments were accepted by Government. In all such cases Government orders are passed on the reports of its subordinate officers about the defaults that take place, and there is thus an interval between the reports and the orders. There would be no finality to any orders if conduct such as that of the plaintiff in the interval were to be considered relevant in deciding the validity of the orders. Lastly and this is important, the resumption was by levy of full assessment, so that the real effect was to increase the revenue demand on plaintiff. The full assessment far exceeded the payments made by plaintiff. So it should be urged that the acceptance of the payments was consistent with the resumption order of 24th May 1937 and there is nothing to show that Government accepted the payments for the purpose of condoning plaintiff's breach of condition.

8. The contention (c) given in paragraph 4 above is not tenable in view of the High Court decisions in 28 Bom. L. R. 1175 and 34 Bom. L. R. 453 as discussed already in daragraph 5.

9. In regard to the contention about want of notice, it should be pointed out that no notice was needed when terminating the grant either by the terms of the grant or under section 39 of the Contract Act. It was the intention of the grant that the judi should be paid duly. It was the plaintiff who committed the breach; it is not open to him to say that he wanted notice that the breach would be followed by its legal consequences.

10. In regard to plaintiff's last contention it is certainly strange that plaintiff should find a cause for complaint in that only some and not all of his lands were resumed by Government. This contention evidently requires no further consideration.

11. For all these reasons it should be urged that the suit fails and must be dismissed.

'the First Class Subordinate Judge,
Hubli.

L. C. 254 44

1. Ramachandra Hanmant Desai , age 24, caste Brahmin, occupation Watanidhivat, residing at Dharwar.

1. The Province of Bombay.

222-5-0 for purposes of court fees and jurisdiction.

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The plaintiff seeks to obtain the following reliefs :-

(a) a declaration that the plaintiff and his heirs are entitled to continue to hold the lands according to the conditions in the Gordoen Settlement Sanad, be granted

(b) a perpetual injunction be issued to the defendant not to obstruct in any way the continuance on the suit property with plaintiff and his heirs according to the terms of the Gordon Settlement Sanad.

(c) It may be ordered that the extra amount of Rs

17-5-0 recovered as mentioned in para 10 above may be ordered to be refunded to the plaintiff.

2. The plaint is based on the following allegations

(a) The plaintiff is the owner and in possession of the suit property and also of several other Peraganna water lands. The plaintiff's family held all these peraganna water lands under the Gordon Settlement S and produced with this plaint. The plaintiff has become the owner of the suit properties as they have fallen to his share in the family partition.

(b) Judii was being regularly paid till 1935. ~~July~~ The judi for 1935-36 was to be paid before July 1936. Plaintiff just having lost his father found difficulty in paying and on 14-7-1936 he applied to the Collector for giving him time till next year. Plaintiff never received any reply to this application. However he paid off all these arrears later on. He paid Rs 200/- on 15-4-1937 and Rs 222-11-10 on 26-4-1937. The Revenue officers accepted these amounts without protest.

(c) Meanwhile it appears that the Collector had written a letter on 16th March 1937 recommending that the peraganna water lands of defaulters should be resumed by levy of full assessment. It appears that he had kept a statement of the defaulters with his letter. It further appears that the plaintiff also was mentioned as a defaulter in the said statement. The Commissioner upheld the recommendation and Government passed a Resolution on 24-5-1937 (G.R.R.D.No. 6799/1933 dated 24-5-1937) sanctioning the proposal made by the Collector.

(d) After resuming the suit property under the authority of the Government Resolution mentioned in para 4 above, Government offered to issue a fresh S nad regarding the suit property, in pursuance of an order passed on 14-4-1938 on a petition by the

Watanders' Association. The plaintiff has accepted new Sanad but before doing so, has expressly reserved the right to bring a suit of the present nature.

(e) The plaintiff submits that the Collector made mistake in including the plaintiff among the defaulters. The defaulters contemplated theere, meant "contumacious defaulters". The Dharwar Collector's circular order No. L.A.D dated 10-6-1927, which has so far been neither withdrawn nor cancelled, expressly said that there should be a failure to pay judi for two successive years. The plaintiff however has paid a major portion of the judi for 1935-36 and for the balance of dues relating to the suit property he had actually applied as stated in para 3 above. The plaintiff therefore was not a defaulter who could be punished by resumption of watan.

(f) The plaintiff further submits that as he had paid away the dues and also as the Revenue officers had accepted the same without protest before the date of the Government Resolution the suit property could not resumed.

(g) The plaintiff also submits that according to the conditions of the conditions of the Gordon Settlement Sanad, watan property could not be resumed if the judi was not paid in time.

(h) The plaintiff further submits that Government could not resume the watan without giving specific notice to the khateder and also to the plaintiff, that the suit properties would be resumed if the dues were not cleared off by certain date. Again the procedure followed in resuming the Paragana watans in only one of the talukas comprised in the Sanad, is not in accordance with law.

(i) For reasons mentioned in para 5 to 8 above, plaintiff submits that the resolution of 24-5-37

referred to in para 4 above, so far as it is made applicable to the suit property belonging to the plaintiff, is illegal, ultravires and not binding on the plaintiff. The plaintiff maintains that he is entitled to hold the suit property according to the terms of the original Gordon Settlement Sanad. The new Sanad issued by the Government takes away some valuable rights of the plaintiff against the Government and hence this suit has to be brought. The Government also has according to the new arrangement recovered Rs 17-5-0 for year more as judi for the suit property for the year 1941-42. Hence the suit for recovery of that amount also.

1) The cause of action arose on the date of the Government Resolution questioned in this suit that is on 24-5-1937. As the said resolution so far as it is made applicable to the suit property is illegal, ultravires and without jurisdiction, it need not be set aside and hence the suit is in time. The notice as required by Section 80 of the Civil Procedure Code hasbeen delivered or left at the office of the Collecto registered post.

3. The Government of Bombay (Ex. 13) contends as follows:-

(a) Plaintiff's claim is not true and is not admitted

(b) The suit is barred under section 4 of the Revenue Jurisdiction Act.

(c) The plaintiff was liable to pay annually to Government a sum of Rs 1339-0-11, as judi in respect of his watan.

(d) For the year 1934-35 plaintiff was liable to pay the said amount of Rs 1339-0-11, judi for the current year and also suspended arrears of Rs 25-11-10. The former amount was paid in time, but the latter amount, namely Rs 25-11-10 was not paid till 22nd August 1936.

(e) The judi for 1935-36 was Rs 1339-0-11 as stated above. Plaintiff paid Rs 410-5-1, only during the year, leav in Rs 928-11-10 as arrears t the end of the year.

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Subsequently he paid into the Taluka Treasury Rs 500/- on 10th October 1936, Rs 200/- on 15th April 1937 and Rs 228-11-10, on the 26th April 1937.

(f) The Garden Settlement Sanad granted to plaintiff was subject to a condition that he should render to Government the fixed yearly dues. Plaintiff committed breach of the condition and thus became liable to have his Sanad forfeited and the land resumed. The orders of 24-5-37 were therefore legal and valid. Plaintiff's various contention to the contrary in paras 3 to 9 of the plaint are not correct and are denied.

(g) Plaintiff was a defaulter on account of his breach of the said condition. There was no obligation on the Collector or Government to grant time to the plaintiff for payment of judi as per his alleged application of 14-7-36. The payments made after July 1936 did not cure the breach which had taken place and did not also absolve him of his liability to the forfeiture or sanad and resumption of lands. The alleged circular of the Collector dated the 10th June 1927 does not apply to this case and plaintiff is not entitled to refer to it or to ~~xxxxxx~~ ply on it.

(h) It is denied that plaintiff was entitled to specific notice as alleged in para 9 of the plaint. It is moreover contended that plaintiff was aware of the action recommended against him by the Collector.

(i) It appears that plaintiff made the payments of 15-4-37, and 26-4-37, in view of the Collector's report of 16th March 1937. The payments having been made after the report plaintiff is not entitled to rely upon them for challenging the validity of the orders of 24th May 1937. Plaintiff's contention that

the payment were accepted by the Revenue Officers without protest is not correct. The payments were not brought specifically to the notice of Government. Moreover in case of resumption by levy of full assessment plaintiff's liability far exceeded the payment made by him. It therefore cannot be contended that the payment were accepted for the purpose of condoning the plaintiff's breach of condition.

j) Defendant denies the contention that resumption of lands in one Taluka only was not in accordance with law.

(k) The Government offer made in the Government Resolution of 14th April 1938 was an act of grace and was subject to condition. Plaintiff fulfilled the conditions and accepted the new Sanad according to the offer. He thus admitted that the old Sanad had been validly terminated. Plaintiff's conduct in executing the new Sanad estops him from filing the present suit. His alleged reservation at the time of the new Sanad of a right to bring a suit of the present nature is of no effect and does not save the estoppel. As the new Sanad is in force, this suit is not maintainable.

(l) The suit is barred by limitation. The orders of of 24th May 1937, were valid. Moreover proceedings were actually taken afterwards for resumpting by levy of full assessment. Plaintiff also paid the full assessment before 15th June 1938 in order to secure a restoration of the grant. Later he executed a greh Sanad. Therefore whether or not the orders of 24th May 1937 were valid, there was an actual attack on plaintiff's rights, and it was not oepn to plaintiff to postpone his suit.

(m) The plaintiff is not entitled to the refund of Rs 17-5-0 or any other amount.

4. The following issues were framed in the case :-

1. Whether the condition of paying the fixed yearly dues was broken ?
2. If so, whether the grant terminated ?
3. Whether a Sanad was issued with the assent of the plaintiffs ?
4. Whether the new Sanad should be treated as the basis for determining the rights of parties ?
5. Whether the issue of a new Sanad precludes the plaintiff from asserting his rights under the old Sanad ?
6. Whether the plaintiff was a "contumacious defaulter" ? If not, whether the Government was entitled to resume the land ?
7. Whether the plaintiff paid off the arrears before the Government order that the lands should be resumed ?
8. Whether any such payment can create rights in the plaintiff's favour ?
9. Whether it was incumbent on the Government to issue a notice as stated in para. 9 of the plaint
10. Whether the order of the Government that the lands should be resumed in default of payment is ultra vires ?
11. Whether part of the waten property cannot be resumed as contended by the plaintiff ?
12. Whether the suit is barred under section 4 of the Revenue Jurisdiction Act ?
13. Whether plaintiff is entitled to a refund of Rs 17-5-0 ?
14. What orders ?

My findings are :-

1 :- No.

2 :- No.

3 :- No.

4 :- No.

5 :- No.

6 :- No.

7 :- Yes.

8 :- Yes.

9 :- No.

10 :- Yes.

11 :- Cannot be resumed.

12 :- Not barred.

13 :- Yes.

14 :- General issue.

Reasons.

6. The plaintiff has filed this suit against the Government of Bombay praying for a declaration that the Government order No. 6792-33 dated ~~xxxx~~ May 24, 1937, is illegal and not binding upon him, for the refund of Rs 17-5-0 and for the issue of an injunction restraining the Government from recovering the full assessment.

7. The order is as follows :-

"Bombay Castle, 24th May 1937.

"Letter from the Collector of Dharwar (Mr. S.B.Vaidya) No. R.E.V., dated the 16th March 1937 :-

I have the honour to state that the holders of paragana watan lands shown in the accompanying statement have not paid the arrears of mahal judi on their lands for the years shown against their names in the statement and have proved contumacious.

2. Attempts were made to recover the mahal judi under section 136 of the Land Revenue Code but without success. The Mamlatdars in accordance with the circular orders issued under this office No. R.R.C.S.R. 186, of 29th July 1933, had impressed on the defaulters that their lands would be resumed if they failed to pay the mahal judi as was done by Government in the case of inamdars of Savanur, Gejjihalli and Sammasagi Taluka (vide Government Resolutions, Revenue Department, Nos. 563/33, of 10th July 1933, 3048/33, of 27th October 1934 and 3248/33, of 3rd August 1935), but with no effect.

3. In view of the fact that the arrears of mahal judi are steadily increasing and have now gone upto Rs.14,979-5-2 and as there is no prospect of recovering them by persuasive methods I recommend that the paragana watan lands of these defaulters be resumed by levy of full assessment".

Memorandum from the Commissioner, S. D. (Mr. J.A.Madan C.I.E., I.C.S.).

" copy with the accompaniment, submitted to Government in the Revenue Department, for orders.

" 2. Under the circumstances reported by the Collector the Commissioner supports his proposal for resumption of the paragana watan lands, included in the accompaniment to his letter by levy of full assessment. Certainly the number of defaulters to be dealt with in this way is large and there appears no other way effectively to recover the Government dues, which are increasing year by year

RESOLUTION. - The proposal made by the Collector of Dharwar for the resumption of the paragana watan lands, standing in the names of the defaulters mentioned in the statement accompanying his letter, by the levy of full assessment is sanctioned".

8. Now the Sanad describes the lands and cash allowances to which it applies and then it provides that the said persons in enjoyment and their heirs shall be obedient to the British Government and act faithfully and honestly and shall go on paying to Government permanently every year amounts as mentioned below the Sanad.

9. Consequently, the settlement arrived at between Government and the Inamdars was as to the right to hold the lands free from full assessment subject to certainconditions.

10. And Mr. Peerzade for the Government of Bombay, submits that if that is the correct interpretation of the Sanad that the right is continued upon the conditions specified, then if either of the conditions of the grant i.e the condition of being faithful to Government, and the condition of paying a fixed duty, is broken, the grant would terminate and the Government would be entitled to claim full assessment

on the lands. He further submits that in this case the condition of paying a fixed duty is as a matter of fact broken and that Government were therefore entitled to terminate the grant and claim full assessment on the lands.

11. The answer made by Mr. Dixit for the plaintiff is on the following lines :-

(a) The Garoon Settlement is an agreement effected by proposal and acceptance and is subject to the ordinary rules applicable to contracts (17 Bom. 407).

(b) No time was fixed in the Sanad for the performance of the obligation of paying a fixed annual duty.

(c) The amount was, as a matter of fact, paid within a reasonable period of time.

(d) The question "what is a reasonable time" is, in each particular case, a question of fact within the meaning of section 46 of the Contract Act.

(e) The judi amount was actually paid into the Treasury by plaintiff; the amount was received despite knowledge of the Collector's proposal to levy full assessment. This conduct on the part of the Government amount to waiver".

(f) That the proposal made by the Collector is upon the footing that the plaintiff was "a contumacious defaulter". As a matter of fact, he is not a defaulter because the plaintiff has done "what is reasonable under the circumstances".

(g) There is no clause providing for the levy of full assessment in the event of failure to pay in time. The remedy is to sue for arrears of judi.

12. As observed already, the Sanad provides that persons who enjoyed the lands had agreed to pay to Government a fixed sum every year in lieu of service. And the plaintiff in his evidence (Ex.34) says that ordinarily the amount was being paid "before the end of July". He says that a sum of Rs 928-11-0 remained to be paid. He then prayed the Collector by an application (copy marked as Ex. 56) to grant him time. He did not receive any reply

And the evidence establishes that he made the following payments

Rs 500-0-0	on	10-10-36
Rs 200-0-0	on	15-4-37
Rs 228-11-0	on	24-6-37

13. It would seem, therefore, that the plaintiff did not pay the sum before the end of July. There was a delay of nearly 9 months in respect of a sum of Rs 428 odd.

14. The evidence further establishes that the plaintiff was liable to pay a sum of Rs 25-11-10 for the year 1932-33. It was entered in the "suspense account". He says that he was not aware of this balance amount. It is noticeable that this in the notice of demand issued to the plaintiff's father on 21-5-1935, this particular sum was not claimed. He was thus misled by Ex. 40. Government cannot now say that there was default in payment in respect of this sum.

15. Now the first point pressed is that the plaintiff had already paid to Government the amount and having recovered the amount, the grant could not be terminated.

16. Mr. Peerzade for the Government of Bombay explains that the plaintiff paid the amount with the knowledge of the proposal made by the Collector for the resumption of the paragana watan lands. To my mind, that is immaterial; because the Treasury officer must be taken to have been aware of the proposal made by the Collector for the resumption of watan lands and despite express or implied knowledge of the proposal made by the Collector received. The realisation by the subordinate officers were on behalf of the Government and the Government had the benefit of these realisations. Consequently, when the amount is accepted, such acceptance is waiver. The Government is estopped from pleading that there was failure to pay the amount in time.

17. In the proposal made by the Collector of Dharwar it was suggested that the plaintiff was a "contumacious" defaulter.

18. Mr. Peerzade did not urge this ground in the course of his arguments beyond saying that the condition of paying a fixed duty in time was broken and the grant would naturally terminate.

19. The law is that default is a purely relative term

just like Negligence. It means nothing more, nothing less, than not doing that what is reasonable under the circumstances; - not doing something which you ought to do having regard to the relations which you occupy towards the other persons interested in the transaction" (per Bowen, L. J., Re. Young and Harston, 31 Ch. D. 174).

20. And default would seem to embrace every failure by a party to perform his contract.

21. To my mind, having regard to the circumstance that no fixed date for payment was specified in the Sanad, the amount must be paid with a reasonable time. I am further of the opinion that the plaintiff paid the amount without a reasonable time having regard to the background of facts sworn to by the plaintiff in his evidence.

22. I, therefore, hold that in the position of affairs discussed above the Government had no right to resume the watan lands and levy full assessment.

23. It is said that a new Sanad has been granted to the plaintiff. But the plaintiff in his letter Ex. 39 written to the Collector made the position crystal clear. This is what he wrote (Ex.39):-

> The undersigned has already given a notice to the Provincial administration through the Collector of Dharwar on 21-5-1938 intimating his intention to file a suit. He still maintains that the order of forfeiture passed by Government was illegal and ultra vires, so far as the undersigned is concerned. However assuming that the order of forfeiture is legal and valid and the undersigned would rather have new Sanad than have his lands forfeited.
>
> The undersigned will therefore sign the new Sanad. And this notice is given to make it clear to Government that he still intends to bring the suit as mentioned in notice and further to make clear that the signing of the new Sanad by the undersigned cannot and will not effect his right to sue".

 17 25 57

24. Consequently the objection taken on the basis of the new Sanad is misconceived.

25. It is next argued that the suit is barred under the Revenue Jurisdiction Act. To my mind, the act of Government in resuming the lands and in levying the full assessment gives a cause of action to the plaintiff.

26. In the result, I issue a direction to Government not to resume the watan lands and not to levy full assessment on the basis of the Government order dated 24-5-1937 after declaring that the said order is ultra vires and inoperative against the plaintiff and after declaring that the plaintiff is entitled to hold the lands free from full assessment on the basis of the Sanad granted to him under the Gordon Settlement. I also pass a decree for the recovery of Rs 17-5-0 and for costs of suit.

31-10-45

Sd. A. C. Sequeira.
Civil Judge, Senior Division.

Dharwar Civil Suit No 157 of 1943 was decided against Govt. The plaintiff who was the holder of a Parpana Watan (Class IV) under a Govt settlement passed made a default in the payment of Govt. Hence Govt. ordered resumption of the lands by levy of full assessment. The plaintiff therefore sued for a declaration that he and his heirs were entitled to hold the Watan lands according to the conditions of the Govt settlement passed. The suit was defended on the technical ground of Jurisdiction, limitation (Art. 14) and estoppel, and on merits also. The trial court decided the suit in plaintiffs favour and issued a direction to Government not to resume the lands by levy of full assessment. The judgment does not

appear to be correct. The learned Judge does not seem to have properly applied his mind to the evidence of Government. On the question of limitation he did not frame any issue and gave no finding. His reasoning on the question of estoppel and ~~to~~ prescription is also scrappy and not at all convincing. (See paras 23, ~~and~~ 24 and 25 of the Judgment. The learned Judge is also wrong in holding that acceptance of by the Treasury Officer of the arrears of land revenue months after due date amounted to waiver and estoppel against Govt. from pleading that there was default in payment. The point has been discussed in para 7 of the brief." (p. 40 of the file).

"This is a fit case for appeal. The Govt. Pleader has already filed an appeal

in anticipation of Govt's sanction 21 29 on the
period of remission was expiring. The
restitution of the appeal may be
sanctioned

RW
20/2/46

A.L.R 20/2
R.L.A
Asst 21/4/46
Sec'y R.D 22.2.46

No 1495
22-2-46

L. D.
23 FEB 1946

31 63

Suits:

Dharwar.

For a declaration that the plaintiff and his heirs are entitled to hold the suit Paragana Watan lands according to conditions in Gorden Settlement Sanad.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1769
Bombay Castle, 1st March 1946.

Read Government Resolution, Legal Department, No.4671 dated the 3rd July 1944.

Endorsement by the Collector of Dharwar No.L.A.W. dated the 14th January 1946 forwarding a copy of the letter No.611 dated the 7th January 1946, from the District Government Pleader, Dharwar stating that the suit noted in the margin

In the Court of the First Class Sub-Judge, Dharwar. Civil Suit No.157 of 1943. (C.S. No.254 of 1944 C.J.(S.D.) Hubli) Ramchandra Hanmant Desai . . . Plaintiff; versus The Province of Bombay. . . . Defendant. Claim - Rs.222-5-0.	was decided by the Civil Judge (S.D.) Hubli on 31st October 1945 when the following Order was passed:-

"I issue a direction to Government not to resume the watan lands and not to levy full assessment on the basis of the Government order dated 24-5-1937 after declaring that the said order is ultra vires and inoperative against the plaintiff and after declaring that the plaintiff is entitled to hold the lands free from full assessment on the basis of the Sanad granted to him under the Gordon Settlement. I also pass a decree for the recovery of Rs.17-5-0 and for costs of suit."

and requesting sanction for the institution of an appeal in the Court of the District Judge, Hubli.

Endorsement by the Commissioner, Southern Division No.L.S.T.-301 dated the 28th January 1946 forwarding the above with his concurrence.

P.T.O.

07

RESOLUTION.- Sanction is accorded to the institution of Civil Appeal in the Court of the District Judge, ~~Hubli~~, Dharwar against the decision of the Civil Judge (S.D.) Hubli dated the 31st October 1945 on the lines of the brief accompanying Government Resolution, Legal Department No.4671 dated the 3rd July 1944.

By order of the Governor of Bombay,

R. M. Mehta Original.

R. M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department.
The Commissioner, Southern Division.
The Collector of Dharwar.
The District Government Pleader, Dharwar.

Submitted for signature
orders at fo. 21 ante
K.P. 3/3

A.S. Please note the corrections. There is no
Civil Judge at Hubli. Correct the
other errors accordingly before issue
Bh.
for
Mr. Thakore

Corrections have been carried out.
K.P.
4/3

Issued
CSF
1/3

Submitted after issue.
File in S.F. Note 8/44.
K.P. 4/3

A.S. 5/3

R.S./44
5/3

33 79

Subject - L.C.S.No.254 of 1944.
Hubli P.C.Subjudge's Court - Dharwar L.C.S.No. 157/1943.

R. R. L. D. No.

No. 523.
Office of the Asst. Govt Pleader
Dharwar Dated. 13 11 45

To,

The Remembrancer of Legal Affairs,

Bombay.

10123
A 15/11/45

Sir,

I have the honour to invite your kind attention to the above subject and state that the Subordinate Government Pleader Hubli - has reported that the plaintiff's suit was decreed in his favour on 31-10-1945 and that the following final order was passed in - the suit.

"In the result, I issue a direction to Government not to resume the watan lands and not to levy full assessment on the basis of the Govt. order dated 24-5-1937 after declaring that the said orde is ultra vires and inoperative against the plaintiff and after - declaring the plaintiff is entitled to hold the lands free from full assessment on the basis of the sanad granted to him under - the Gordon Settlement. I also pass a decree for the recovery of

Rs.17-5-0 and for costs of suit ".

The Collector Dharwar is being requested to move Government to sanction the filing of an appeal. Certified copies have been applied for.

12-11-1945.

Your obedient servant,

B Dharwadkar

Government Pleader.

10123
15-11-45

Submitted for information
2. Await report from the Colln.

PBMS
15-11

A.S.P. 15/11/45

Legal Department.

Please see the letter from the District Government Pleader, Dharwar, dated the 26th July 1950. This relates to Civil Suit No.157/1943, the defence of which was sanctioned by G.R.L.D.No.4671 dated the 3rd July 1944 (Suit file p.35). The Lower Court having decided the suit against Government, the institution of an appeal was sanctioned by G.R.L.D.1769 dated 1st March 1946 (file p.63). The result of that appeal was not known to this Office until the Collector's letter No.LAW.414 dated the 3rd May 1950 (p.1 ante of the correspondence) was received in this Office. From that letter it was learnt that the Appellate Court had confirmed the decree and Government's appeal had been dismissed with costs. It will be seen from the District Government Pleader's letter that the appeal was decided some time in September 1947 and, therefore, any further appeal ~~was~~ can now be time-barred.

2. It is submitted that in this case both the Collector and the District Government Pleader have fa-ed to carry out their duties under the Law Officers' Rules. Under Rule 141 of the Law Officers Rules when an appeal from an original decree has been decided the same procedure as is prescribed for making or defending an appeal from ~~a revisional appeal~~ an original decree is to be followed for making or defending a second appeal. Under Rule 129 which would apply tp appeals as well as to suits, the District Government Pleader has to communicate the nature of the decision to the Collector or other Officer concerned and he has also to forward a copy of his report direct to the R.L.A. within 7 days from the date of the decision. Rule 130 requires the District Government Pleader to obtain certified and uncertified copies and to forward the same to the R.L.A. as well as the Collector. Rule 131 requires . . .

that in the case of an adverse decision the District Government Pleader should, while forwarding copies of Judgment and decree, submit a report to the Collector stating his opinion with reasons as to whether the decision should be acquiesced in or appealed against, and Rule 132 directs that the Collector must forward that report and the papers received from the Government Pleader to the Legal Remembrancer with his opinion as to whether an appeal should be filed and such report should be despatched to the Remembrancer of Legal Affairs within 21 days from the date on which the judgment was delivered.

3. The District Government Pleader thus failed to communicate the result of the appeal within 7 days from the date of the decision and this office was entirely ignorant of the fact that the appeal had gone against Government. For this mistake, the District Government Pleader has blamed his clerk. This is the second time that the District Government Pleader, Dharwar, has blamed the clerk of his office. R.L.A. may please recall that in another case also the Office of the Dist. Govt. Pleader, Dharwar, did not send certified copy of a decree to the High Court with the result that the appeal, institution of which was sanctioned by Government in the High Court, became time-barred in the absence of the decree. In that case also the Dist.Govt.Pleader, blamed his clerk and the clerk was warned under the orders of the R.L.A.

4. The Collector's Office has also failed to carry out the provisions of Rule 132 of the Law Officers' Rules. The District Government Pleader appears to have expressed his opinion to the Collector that the case was not fit for a second appeal and apparently the Collector was satisfied with that. However, the question as to whether an appeal should be filed or not is to be finally determined by the Remembrancer of Legal Affairs and the Government, and not by the Collector. In his letter of 3rd May 1950

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the Collector enquires 3 years after the appeal was decided whether the result of the appeal has been duly recorded. It is for orders as to what reply should be given to the Collector and the District Government Pleader.

2/8

ACR
RCR

The Collr may be asked to explain why the report was sent to CD under Rule 132 of the CR Rules

RK 3/8

RCR The GP. should also be told that Govt. expect that he should pay personal attention to such matters and hope that such defaults will not occur in future. The Clerk's explanation should be called for

3/8